

# **Solid Waste Management**

## **Resource Guide on 109 Districts**



**Natural Resources and  
Environmental Protection Cabinet**

Department for Environmental Protection  
Division of Waste Management  
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SOLID WASTE MANAGEMENT  
RESOURCE GUIDE ON 109 DISTRICTS

**PURPOSE**

This document explains and clarifies the Kentucky statute that allows counties to establish special boards or districts for managing solid waste. The Kentucky Revised Statute 109 (KRS 109) can be used by counties to reinforce their authority for managing solid waste at a local level.

This guide:

1. provides a brief history of KRS 109;
2. outlines procedures for establishing and dissolving 109 Districts; and
3. lists contacts for obtaining further details regarding the day-to-day operations of 109 Districts.

KRS 109 is a management option for counties to use for solid waste issues. A 109 Board or District may be set up as either an arm of the fiscal court or as an independent body to work cooperatively with the fiscal court. The advantage of a 109 Board or District is that it can "specialize" in solid waste issues alone, a luxury that few fiscal courts have.

## Terminology

KRS 109 grants authority for establishing *109 Districts or Boards*. A *109 District* is a geographical area over which a solid waste management authority may function. A *109 District* may be comprised of one county or it may be formed by several counties.

A *109 Board* is the management body that makes decisions, creates regulations, etc. For consistency, this document will use the term *109 Districts* throughout, implying that a *109 District* is the area for which the Board is the governing body.

*Cabinet* refers to the Natural Resources and Environmental Protection Cabinet.

*Division* refers to the Division of Waste Management in the Natural Resources and Environmental Protection Cabinet.

*Governing Body* "means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082" (KRS 224.01-010(46)).

## History of 109 Districts

Solid waste management planning formally began in Kentucky in 1966 with the creation of Kentucky Revised Statute Chapter 109. This legislation specified provisions for Garbage and Refuse Disposal Districts, now commonly called 109 Districts.

By 1982, state laws and regulations were expanded to give counties the authority and responsibility to develop solid waste management plans. This authority came under KRS Chapter 224 which references KRS Chapter 109. Accordingly, KRS Chapter 109 has been amended to incorporate and reference the provisions (solid waste management plans) of KRS Chapter 224.

Over the past 30 years, two statutes have steered the course of solid waste management, KRS 109 and 224. Because the authority granted by KRS 109 is more open to interpretations and more localized (non-state directed), there have been some questions and confusion over the powers and responsibilities of 109 Districts. Further, many counties that established 109 Districts under the 1966 legislation have either allowed the Districts to become inactive without formally dissolving them and/or have attempted to reactivate the 109 Districts without reconciling the action with their solid waste management plans.

## **Establishing and Dissolving 109 Districts**

### **Establishing a 109 District**

The procedure for establishing a 109 District depends upon the type of district desired. There are two types of 109 Districts: (1) those that do not have taxing authority; and (2) those that do have taxing authority.

- **Non-taxing 109 Districts**

In 1988, the General Assembly amended KRS 109 to allow counties to establish non-taxing 109 Districts by ordinance. KRS 109.041(13) states: "Notwithstanding any other provision of law, a fiscal court may, by ordinance, create a solid waste district to exercise the powers of the county pursuant to this chapter, except that a district created for this purpose shall not levy or collect ad valorem property taxes."

In addition to the above, the county must reconcile the creation of a 109 District with the county solid waste management plan. The plan must be formally amended according to the Division of Waste Management's regulations and must be approved by the Natural Resources and Environmental Protection Cabinet.

- **Taxing 109 Districts**

The following is an outline of procedures that must be followed to establish a 109 District with taxing authority. The procedures are referenced in KRS 109.115, but details are found in KRS 65.182 (or 65.192 for first-class cities). Briefly, the

procedures are:

- Step 1. Citizens must petition the fiscal court or urban-county government to establish the District and include cost projections, land use plans and other documentation in support of establishing a taxing 109 District.
- Step 2. The fiscal court must notify state, local and regional bodies (including cities and area development districts) about the petition. The Court Clerk must schedule a public hearing (after a public notice period of thirty (30) days.
- Step 3. A public hearing must be held to receive and consider public comments.
- Step 4. The fiscal court or urban-county government must approve/disapprove the creation of a 109 District within 30 days of the hearing. An ordinance must be passed by the fiscal court to make the District official.
- Step 5. A certified copy of the ordinance must be submitted to the County Clerk with the tax amount indicated.
- Step 6. The tax takes effect January 1 of the year following passage of the ordinance certifying the 109 District.
- Step 7. The county must reconcile the creation of a 109 District with the county solid waste management

plan. A formal amendment to the plan must be approved by the Natural Resources and Environmental Cabinet. The Division of Waste Management should be contacted for details.

- Dissolving a 109 District

A county cannot dissolve a 109 District by simply allowing the 109 District to become inactive. The District must be formally removed from the county records. This is accomplished in the following ways:

- Non-taxing Districts

Since non-taxing 109 Districts are established by ordinance, they must be dissolved by ordinance as well. The process for rescinding any county ordinance should be followed (first, second readings, etc.).

In addition, the county must reconcile the dissolution of the 109 District with the county solid waste management plan. The plan must be formally amended according to the Division of Waste Management's regulations and must be approved by the Natural Resources and Environmental Protection Cabinet. The division should be contacted for procedures.

- Taxing District

Taxing districts are set up by petition and other formal procedures as outlined in KRS Chapter 65. In



KRS 65.170, there are specific steps that the county must follow to dissolve the districts.

Additionally, the county must reconcile the dissolution of the 109 District with the county solid waste management plan. The plan must be formally amended according to the Division of Waste Management's regulations and must be approved by the the Natural Resources and Environmental Protection Cabinet. The division should be contacted for procedures.

### Management of a 109 District

A 109 District, whether a single or multi-county district, "shall be controlled and managed by a board of directors" (KRS 109.115(2)). The **fiscal court** "shall determine" the board of directors by one of two methods:

- Single County district. Fiscal Court appoints the county judge/executive, the mayor of the most populous city, and a third member to proportionally distribute the urban-rural population representation. The county judge/executive and mayor may delegate a substitute representative.
- Multi-County district. The county judge/executive appoints and the fiscal court confirms that each county has at least one member. There must be a minimum of three persons and no more than 12 persons on the board. If a county has two or more members on the board, the ratio between urban and rural must be proportionate, e.g., one member each from the urban and rural areas. Refer to KRS 109.115(3)(a)(b) for the specific language regarding the membership.

## **Powers/Authority of 109 Districts**

Once a 109 District is established, the fiscal court must clearly state through the ordinance the authority granted to manage aspects of solid waste management. These may include collection, source reduction, storage, transportation, transfer, processing, treatment and disposal. According to KRS 109.041, county powers for managing solid waste may be given to a legally formed 109 District.

These powers allow a 109 District to:

1. Plan, initiate, acquire, construct, maintain, and own and hold the permit for solid waste management facilities; enter into contracts or leases with private parties for the design, construction, or operation of a publicly owned solid waste management facility; and adopt administrative regulations.
2. Issue bonds.
3. Enter into contracts with entities to provide solid waste services to the area for any term of years.
4. Create taxing or non-taxing boards.
5. Hire an enforcement officer (funded by license fees under KRS 68.178) to inspect solid waste landfills in the area to ensure compliance with the cabinet's construction and operating requirements. The qualifications, compliance monitoring standards and reporting requirements for an enforcement officer are outlined in the regulation 401 KAR 40:060.

6. Require area residents to use certain solid waste collection systems (KRS 109.062) or solid waste management facilities (KRS 109.059).
7. Adopt rules and regulations consistent with the cabinet for adequately managing solid waste to protect public health.
8. Condemn property as prescribed by the Eminent Domain Act of Kentucky.
9. Extend services to a city within the county, provided the city is given one year prior notice and that the county ensures revenues sufficient to retire the city's debt.
10. Contract with other counties/districts to regionalize solid waste management.

## **Questions and Answers**

The following are frequently asked questions about 109 Districts. The answers are based on present applications of the statutes.

### **Question: How does the Authority of a 109 District Compare to a County (Fiscal Court)?**

A 109 District may be as strong or as symbolic as the county desires. The fiscal court or urban-county government ultimately must approve the establishment of a 109 District (See Page 5). Therefore, the county may give the District full management authority (independent of the fiscal court or urban-county government) or may have the District act only as an advisory arm.

The important issue is: Once the 109 District is established (via fiscal court or urban-county government approval), its authority is firm. If the county wishes to change this authority, the 109 District must be formally dissolved or re-established. Further, any changes must be effected through a plan amendment, and the cabinet must approve the dissolution or re-establishment to assure consistency with the local solid waste management plan.

### **Question: How broad or narrow is a 109 District's authority?**

KRS 109.041(1) states that counties, "acting by and through their fiscal courts, may own and hold the permit for, plan, initiate, acquire, construct and maintain solid waste management facilities and adopt administrative regulations..." The section goes on to list a variety of areas in which counties may act to manage solid waste. KRS 109.115 states that "Waste management districts shall have all powers and authority set forth in 109.041."

Therefore, a 109 District has all the powers that a county government has in managing solid waste, writing regulations and enforcing them. **A 109 District, however, does not have the authority to pass ordinances relating to solid waste.**

**Question: What is the relationship of the 109 District to the county solid waste management plan?**

The solid waste management plan (as required under KRS Chapter 224) is the framework or blueprint for all county activities regarding solid waste management. If the 109 District is the governing body for the county, responsibility for plan implementation is with the 109 District. If there is a major change in the solid waste management plan (e.g., establishment or dissolution of a 109 District), the plan must be formally amended. This requires a public notice period and approval by the cabinet.

**Question: Is the 109 District the same as a solid waste management area or solid waste management district?**

A solid waste management area is a term relating to KRS Chapter 224 and the county's responsibility for preparing and implementing a solid waste plan. With the submittal of these plans to the cabinet, counties specify the solid waste management area (the geographical area) covered by the plan. The solid waste management area may be a single county or a multi-county region.

Also referenced in KRS Chapter 224 is a solid waste management district. This is the same as a 109 District. It too may be a single county or multi-county region.

**Question: What authority does the 109 District have regarding the Cabinet's procedures for permitting solid waste management facilities?**

If a 109 District is the governing body in the county, the District will have input into the permit process for solid waste management facilities. For instance, an application for a solid waste disposal facility will not be accepted by the cabinet unless the application contains a **determination** from the governing body (109 District or fiscal court) that the facility is consistent with the area solid waste management plan. Refer to KRS 224.40-315 for further specifics.

## Contacts for 109 Districts

According to a Division of Waste Management survey of all 120 Kentucky counties, there are presently 13 counties that have established individual 109 Districts.

### Single County Districts

|           |           |
|-----------|-----------|
| Bell      | Jefferson |
| Butler    | McCreary  |
| Christian | Meade     |
| Grant     | Pendleton |
| Hart      | Pulaski   |
| Jackson   | Shelby    |
|           | Simpson   |

Below is a listing of the 109 Districts established and the persons who may be contacted for more details:

Ray Long, Chairman  
Bell County Garbage and  
Refuse Disposal District  
P O Box 499  
Pineville KY 40977

David Martin, Chairman  
Butler County 109 Board  
P O Box 626  
Morgantown KY 42261

Jeff Clemons, Chairman  
Grant County 109 Board  
603 North Main Street  
Williamstown KY 41097

John Niland, Chairman  
Hart County S W Mgt District  
P O Box 486  
1812 Flat Rock Road  
Munfordville KY 42765

The Honorable William O Smith  
Jackson County Waste Mgt Dist  
P O Box 175  
McKee KY 40447

Jonathan Goldberg, Chairman  
Jefferson Co Waste Mgmt Dist  
C/O Jefferson Co Planning &  
Environmental Management  
517 Court Place, Suite 600  
Louisville KY 40202



Carlis Vanover, Chairman  
McCreary County S W Board  
P O Box 940  
Whitley City KY 42653

Dudley Lacy, Chairman  
Pennyrile S W Mgt Authority  
Christian County 109 Board  
22850 Coal Creek Road  
Hopkinsville KY 42240

Everett Bailey, Chairman  
Shelby Co Landfill Commission  
1570 Kings Highway  
Waddy KY 40076

Glenda Conner, Chairman  
Pendleton Co S W Dist  
RT 4, 290M  
Falmouth KY 41040

Chuck Estes, Chairman  
Pulaski Co S W Board  
P O Box 712  
Somerset KY 42501

Alison Cummings, Chairman  
Simpson Co S W District  
402 Longview Drive  
Franklin KY 42134

### **Statutory Authority**

Relevant portions of KRS Chapters 67, 109, and 224 are included in this section. Counties should refer to the full statute for a complete understanding of these authorities. Further, local legal counsel should be sought for interpretation. Finally, the cabinet's regulations for solid waste management planning should be reviewed.

#### **KRS 67.083**

(3) "The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds and employ personnel in performance of the following public functions:

(o) "Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles..."

#### **KRS 109.011 (11)**

"Notwithstanding any provisions of KRS Chapters 82, 83, and 94, it is the intent of the General Assembly that this chapter and KRS 67.083(3)(o) provide counties with authority to develop a solid waste management system for solid waste generated within the geographical boundaries of the county, consistent with the provisions of this chapter and KRS Chapter 224."

**KRS 224.01-010(32)**

Waste Management District "means any county or group of counties electing to form under the provisions of KRS 109.115 and operate in conformance with the provisions of KRS Chapter 109..."

**KRS 224.43-340(1)**

"The Cabinet shall promulgate regulations pursuant to KRS 224 for the reduction and management of solid waste, consistent with the statewide solid waste reduction and management plan, the goals established by KRS 224.43-010, and the provisions of KRS Chapter 109."

These regulations have been promulgated as 401 KAR 49:011. Also, KRS 224.42-340(12) and KRS 109.042 pertains to the Enforcement Officer who may be hired from the license fee (KRS 68.178) imposed on solid waste management facilities located within a county.

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**This document was prepared by the Resource Conservation and Local Assistance Branch, Division of Waste Management. For further information or assistance, contact Joy Morgan at 502/564-6716.**

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